ZHOU HUIDE v. YAP KIM TEE & ANOR

COURT OF APPEAL, PUTRAJAYA
PRASAD SANDOSHAM ABRAHAM JCA
HASNAH MOHAMMED HASHIM JCA
ASMABI MOHAMAD JCA
[CIVIL APPEAL NO: P-02(NCVC)(W)-797-04-2016]
6 APRIL 2017

TRUSTS: *Trustees – Co-trustee – Trust for temple – Refusal of other trustees to cooperate with appellant as co-trustee – Appellant's request for information regarding temple's financial status denied – Whether necessary for appellant to know details of assets of temple as appellant was a mere visitor – Whether High Court misinterpreted terms and purpose of declarations of trust – Whether appellant should be allowed access to information pertaining to affairs of temple to carry out duties as co-trustee*

The appellant and the respondents were co-trustees of the Beow Hiang Lim Temple ('the temple'). The appellant was a Chinese national residing in Singapore whilst both the respondents were resident monks at the temple. By a declaration of trust dated 10 September 2002 and 24 August 2004 ('declarations of trust') they were appointed as co-trustees by Master Kong Euee ('Kong'). Under both declarations of trust, the appellant and respondents were entrusted to hold the trust properties as joint and equal trustees. It was stipulated in the said declarations of trust that the temple shall be under the sole management and control of the trustees and shall be used and maintained as the co-trustees shall direct. After the demise of Kong, a dispute arose between the appellant and the respondents. The respondents rejected the appellant's status as one of the co-trustees and refused to cooperate with the appellant in carrying out his duties. Since the appellant was a foreigner, before any registration, the prior consent of the Penang State Authority and Foreign Investment Committee ('FIC') was necessary. The respondents alleged that since no consent was obtained before the transfer of the trust properties, the registration of the appellant as a co-trustee was void. The respondents subsequently filed an originating summons ('OS 1957') against the appellant to apply for, *inter alia*, (i) the removal of the name of the appellant as a co-trustee of the temple in the documents of title of the trust properties; and (ii) the removal of the appellant as a co-trustee of the temple. The Judicial Commissioner found no grounds to remove the appellant as trustee of the temple. The High Court further ordered the parties to do whatever necessary to regularise the position of the appellant as a co-trustee to be properly named in the title deeds after obtaining the necessary approvals of the State Authority. Despite the order of the High Court in OS 1957 the respondents refused to comply with the High Court order and further denied the appellant's request for information regarding the

temple's financial status. The appellant then initiated an action in the High Court in his capacity as a trustee of the temple to protect and safeguard the interest of the temple. The High Court Judge dismissed the appellant's action and *inter alia*, held that the appellant was just a visitor and therefore there was no necessity for him to know the details of the assets of the temple. Hence, the present appeal.

Held (allowing appeal; setting aside order of High Court)
Per Hasnah Mohammed Hashim JCA delivering the judgment of the court:

(1) The judge had misinterpreted the terms and purpose of the declarations of trust. The reliefs/orders sought by the appellant were in tandem with the powers and obligations conferred upon the trustees of the temple as dictated by the terms of the declarations of trust. The words used in the declarations of trust were clear, certain and unequivocal. The terms of the trust were not limited to the trust properties but also the management of the temple. Thus, the appellant as the co-trustee must be allowed access to information pertaining to the affairs of the temple in order for him to exercise his duties effectively as a co-trustee according to the terms of the trust. (paras 35-37)

Bahasa Malaysia *Headnotes*

Perayu dan responden merupakan pemegang amanah bersama Kuil Beow Hiang Lim ('kuil'). Perayu adalah warganegara China yang menetap di Singapura manakala kedua-dua responden adalah sami biarawan di kuil tersebut. Melalui satu perisytiharan amanah bertarikh 10 September 2002 dan 24 Ogos 2004 ('pengisytiharan-pengistiharan amanah') mereka dilantik sebagai pemegang amanah bersama oleh Master Kong Euee ('Kong'). Di bawah kedua-dua pengisytiharan amanah tersebut, perayu dan responden diamanahkan untuk memegang harta amanah sebagai pemegang amanah bersama. Adalah dinyatakan dalam pengisytiharan-pengisytiharan amanah tersebut bahawa kuil tersebut akan berada bawah pengurusan dan kawalan tunggal pemegang amanah dan akan digunakan dan dikekalkan sebagaimana pemegang amanah bersama mengarahkan. Selepas kematian Kong, pertikaian berbangkit antara perayu dan responden. Responden menolak status perayu sebagai salah seorang pemegang amanah dan enggan bekerjasama dengan perayu dalam menjalankan tugasnya. Oleh kerana perayu adalah orang asing, sebelum pendaftaran, kebenaran Pihak Berkuasa Negeri Pulau Pinang dan Jawatankuasa Pelaburan Asing ('FIC') adalah diperlukan. Responden-responden menghujahkan bahawa oleh kerana tiada kebenaran diperolehi sebelum pemindahan harta amanah, pendaftaran perayu sebagai pemegang amanah adalah tidak sah. Responden kemudiannya memfailkan saman pemula ('OS 1957') terhadap perayu dan memohon, antara lain, (i) penyingkiran nama perayu sebagai pemegang amanah bersama kuil dalam dokumen hak milik harta amanah; dan (ii) penyingkiran perayu sebagai pemegang amanah bersama kuil. Pesuruhjaya Kehakiman tidak mendapati

alasan untuk menyingkirkan perayu sebagai pemegang amanah kuil tersebut. Mahkamah Tinggi selanjutnya memerintahkan supaya pihak-pihak melakukan perkara yang diperlukan untuk mengaturkan kedudukan perayu sebagai pemegang amanah bersama untuk dinamakan dengan betul dalam surat hak milik setelah mendapat kelulusan yang diperlukan oleh Pihak Berkuasa Negeri. Walaupun perintah Mahkamah Tinggi di OS 1957 telah diberikan, responden enggan mematuhi perintah Mahkamah Tinggi dan seterusnya menafikan permintaan perayu untuk maklumat mengenai status kewangan kuil tersebut. Perayu kemudiannya memulakan tindakan di Mahkamah Tinggi atas kapasitinya sebagai pemegang amanah kuil untuk melindungi kepentingan kuil tersebut. Hakim Mahkamah Tinggi menolak tindakan perayu dan, antara lain, menyatakan bahawa perayu hanya seorang pelawat dan oleh itu, tiada keperluan untuk perayu mengetahui butir-butir aset kuil tersebut. Oleh itu, rayuan ini.

Diputuskan (membenarkan rayuan; mengetepikan perintah Mahkamah Tinggi)

Oleh Hasnah Mohammed Hashim JCA menyampaikan penghakiman mahkamah:

(1) Hakim terpelajar telah menyalahtafsirkan istilah dan tujuan pengisytiharan-pengisytiharan amanah tersebut. Relif-relif/perintah-perintah yang dipohon oleh perayu adalah selaras dengan kuasa dan kewajipan yang diberikan kepada pemegang amanah kuil seperti diperuntukkan oleh terma-terma pengisytiharan-pengisytiharan amanah. Perkataan yang digunakan dalam perisytiharan-perisytiharan amanah jelas, nyata dan tidak bercanggah. Syarat-syarat amanah tidak terhad kepada harta amanah tetapi juga pengurusan kuil. Oleh itu, perayu, sebagai pemegang amanah harus diberi akses kepada maklumat berkaitan dengan hal ehwal kuil agar perayu menjalankan tugasnya dengan berkesan sebagai pemegang amanah mengikut syarat-syarat amanah.

Case(s) referred to:

Re Chin Sem Lin's Settlement; Yong Tet Fong & Anor v. Chin Thin Lee & Ors [1971] 1 LNS 120 HC ***(refd)***

Yong Nyee Fan & Sons Sdn Bhd v. Kim Guan & Co Sdn Bhd [1978] 1 LNS 244 FC ***(refd)***

For the appellant - Khoo Kay Ping & Alan Lim Wei Lun; M/s Zaid Ibrahim & Co

For the respondent - Goh Chek Kang & Siew Chee Wa Christina; M/s Lim Kean Siew & Co

[Editor's note: Appeal from High Court, Pulau Pinang; Originating Summons No: 24NCVC-271-03-2015 (overruled).]

Reported by Sandra Gabriel

A

JUDGMENT

Hasnah Mohammed Hashim JCA:

[1] This appeal is against the decision of the learned High Court Judge made on 17 March 2016 dismissing the appellant's originating summons
B (OS) dated 23 March 2015. We had, after perusing the record of appeal and hearing and considering the written and oral submissions of learned counsel for the parties unanimously allowed the appeal with no order as to costs. The High Court orders are set aside. Deposit to be refunded. These are our reasons in full.

C **The Appellant's Originating Summons (OS)**

[2] In the OS, the appellant had applied for the following orders, *inter alia*:

(a) The respondents to hold an annual trustees' meeting of the Beow Hiang Lim Temple ("the temple");

D (b) The production of annual audited accounts and an inventory of the temple's assets for the appellant's inspection;

(c) The trust properties shall not be sold/disposed of by the respondents pending the registration of the appellant's name as joint trustee thereof;

E (d) That the respondents give their full co-operation and/or take appropriate steps to procure the registration of the appellant's name as joint trustee of the trust properties;

(e) That the respondents shall obtain the written consent of the appellant to sell and/or dispose of the trust properties and that all transactions
F without the prior written consent of the appellant shall be declared null and void;

(f) The respondents would not prevent or restrict the appellant from entering the temple.

G **[3]** The trust properties are as follows:

(i) All those two (2) pieces of land messuages and hereditaments situate in North East District, Penang comprised in Geran (First Grade) No. Pendaftaran 49375 and 49376 and known as Lot Nos 212 and 213 respectively, Sec. 3, Town of Ayer Itam together with premises No. 503,
H Hill Railway Road, 11500 Ayer Itam, Penang erected thereon;

(ii) All those of land messuages and hereditaments situate in Sementara No. H.S. (D) 6667 and known as No. PT 1261, Sec. 3, Town of Ayer Itam together with premises No. 505-A, Hill Railway Road, 11500 Ayer Itam, Penang erected thereon;

I (iii) All those four (4) pieces of land messuages and hereditaments situate in North East District, Penang comprised in Geran (First Grade) No. Pendaftaran 31574,31576,31633 & 31644 and known as Lot Nos

228,232,1209 and 1258 respectively, Sec. 3, Town of Ayer Itam together with premises Nos. 520,521,508 and 509, Hill Railway Road, 11500 Ayer Itam, Penang erected thereon;

(iv) All that pieces of land messuages and hereditaments situate in North East District, Penang comprised in Geran (First Grade) No. Pendaftaran 60709 known as Lot No. 1378, Sec. 3,Town of Ayer Itam together with premises No. 129, York Road 10450, Penang erected thereon;

(v) All those two (2) pieces of land messuages and hereditaments situate in North East District, Penang comprised in Geran (First Grade) No. Pendaftaran 19709 and 487111 and known as Lot Nos. 1476 and 1477 respectively (now both lots relineated and known as Lot No. 2261 comprised in Geran (First Grade) No. Pendaftaran 90521), Sec. 4 Town of George Town, together with premises No. 5, Concordia Road, 10250 Penang erected thereon;

(vi) All that pieces of land messuages and hereditaments situate in North East District, Penang comprised in Geran (First Grade) No. Pendaftaran 31575 and known as Lot No. 229 Sec. 3, Town of Ayer Itam;

(vii) All that pieces of land messuages and hereditaments situate in North East District, Penang comprised in Suratan Hakmilik Sementara No. H.S. (D) 6668 and known as No. PT 1262, Sec. 3, Town of Ayer Itam together with premises No. 505-C, Hill Railway Road, 11500 Ayer Itam, Penang erected thereon;

(viii) All that pieces of land messuages and hereditaments situate in North East District, Penang comprised in Suratan Hakmilik Sementara No. H.S. (D) 6669 and known as No. PT 1266 and 1267 respectively, Sec. 3, Town of Ayer Itam together with premises No.505-D, Hill Railway Road, 11500 Ayer Itam, Penang erected thereon;

(ix) All those two (2) pieces of land messuages and hereditaments situate in North East District, Penang comprised in Suratan Hakmilik Sementara No. H.S. (D) 6672 and 6673 and known as PT Nos. 1266 and 1267 respectively Sec. 3, Town of Ayer Itam, together with premises No. 505-G, Hill Railway Road, 11500 Ayer Itam, Penang erected thereon;

(x) All that pieces of land messuages and hereditaments situate in North East District, Penang comprised in Geran (First Grade) No. Pendaftaran 30959 and known as Lot No. 1562 Sec. 3, Town of Ayer Itam together with premises No. 501-H ,Hill Railway Road, 11500 Ayer Itam, Penang erected thereon; and

(xi) All that pieces of land messuages and hereditaments situate in North East District, Penang comprised in Geran (First Grade) No. Pendaftaran 30960 and known as Lot No. 1563 Sec. 3, Town of Ayer Itam together with premises No. 501-G ,Hill Railway Road, 11500 Ayer Itam, Penang erected thereon.

A **Material Facts**

[4] The facts and the issues relating to this appeal are uncomplicated. The appellant and the respondents are co-trustees of the temple. The appellant is a Chinese national residing in Singapore whilst both the respondents are resident monks at the temple. By a declaration of trust dated 10 September
B 2002 and 24 August 2004 ("declarations of trust") they were appointed as co-trustees by Master Kong Euee who was the Chief Abbott of the temple. Initially the 18 trust properties owned by the temple were registered under the name of Master Kong Euee. However, due to his old age, Master Kong Euee decided to appoint additional trustees. He appointed the appellant and
C the respondents as co trustees. Master Kong Euee passed away on 23 January 2006, leaving the appellant and both respondents as the remaining co-trustees.

[5] Under both declarations of trust, the appellant and both respondents were entrusted to hold the trust properties as joint and equal trustees. It is
D stipulated in the said declarations of trust that the temple shall be under the sole management and control of the trustees and shall be used and maintained as the co-trustees shall direct,

> 4. Subject to the provision of these presents the Temple shall be under
E the sole management and control of the Trustees and shall be maintained as they shall direct.

[6] In respect of the trust properties it is stipulated as follows:

> NOW THESE PRESENTS WITNESSETH that we the said KONG EUEE, YAP KIM TEE, LEE MUN PEE and ZHOU HUIDE (hereinafter
F referred to as "the Trustees") do hereby declare that we stand seised and possessed of the aforesaid land and premises upon trusts and with and subject to the powers and provisions hereinafter contained.

[7] By the terms of the declarations of trust it is clear that the trust properties were purchased for the benefit of the temple and to be used for
G the purpose of the temple in the manner as provided under the said trust,

(a) ancestral worship and religious rites
(b) sacrificial offerings;
(c) studying, preaching, teaching;
H (d) meetings in connection with the temple; or
(e) any other purposes calculated or in the opinion of the trustees to improve or benefit the moral, social or intellectual condition of the adherents of the temple.

[8] Prior to 2002, the trust properties were registered in the name of just
I one person, that is, Master Kong Euee. However, after the appointment of additional trustees on 10 September 2002, five of the trust properties were transferred to Master Kong Euee, the respondents and the appellant as co-trustees.

[9] After the demise of Master Kong Euee a dispute arose between the appellant and the respondents. The respondents rejected the appellant's status as one of the co-trustees and refused to cooperate with the appellant in carrying out his duty.

[10] It is alleged that the appellant refused to take the necessary steps to apply for the sanction of the court to complete the sale of Lot 2025 to a third party. Since the appellant is a foreigner the prior consent of the Penang State Authority and Foreign Investment Committee (FIC) was necessary before any registration. The respondents further alleged that since no consent was obtained before the transfer of the trust properties the registration of the appellant as a co-trustee is void.

[11] The respondents subsequently filed an Originating Summons No. 24-1957-2006 ("OS 1957") on 11 March 2007 against the appellant to apply for, *inter alia*:

(a) the removal of the name of the appellant as a trustee of the temple in the documents of title of the trust properties; and

(b) the removal of the appellant as a trustee of the temple.

[12] On 18 July 2013, the learned Judicial Commissioner after having heard the arguments and considered the documentary evidence before him found no grounds to remove the appellant as trustee of the temple. The High Court further ordered that the parties are at liberty to do whatever is necessary to regularise the position of the defendant (the appellant in this appeal) as a co-trustee to be properly named in the title deeds after obtaining the necessary approvals of the State Authority.

[13] However, despite the order of the High Court in OS 1957 the respondents blatantly refused to comply with the High Court order and further denied the appellant's request for information regarding the temple's financial status. Consequently, steps were taken to expunge the appellant's name from the document of titles and Lot 2025 was sold and transferred to a third party.

[14] The respondents failed to respond to the appellant's requests through his solicitor's letters:

(a) to hold a annual trustees' meeting;

(b) to produce of the temple's accounts and inventory list; and

(c) that the trust properties cannot be disposed pending the re-registration of the appellant as a co-trustee on the documents of title.

[15] The appellant through his counsel issued a letter dated 10 April 2014 to the respondents and enquired if the respondents have any objection to the appellant's applications to re-register his name as a co-trustee on the documents of title of the trust properties. By a letter dated 15 May 2014, the respondents notified that they would not agree to the appellant's intended application.

[16] The appellant initiated the action in the High Court in his capacity as a trustee of the temple to protect and safeguard the interest of the temple.

[17] After hearing arguments from both parties, the learned High Court Judge on 17 March 2016 dismissed the appellant's OS with costs of RM4,000. Hence this appeal.

Findings Of The High Court

[18] The learned High Court Judge concluded *inter alia* in her grounds of judgment as follows:

(i) that by the declarations of trust the appellant is a co-trustee of the temple;

(ii) Clause 4 of the declaration of trust stipulates that the management of the temple vested in the trustees and only extend to the trust properties under the said trust; and

(iii) The appellant is just a visitor and therefore there is no necessity for him to know the details of the assets of the temple.

The Appellant's Submission

[19] Before us, learned counsel for the appellant submitted that as a co-trustee the appellant has the obligation and responsibility under the declaration of trust to ensure that the affairs of the temple are managed properly. In order for the appellant to exercise his duties as co-trustee effectively as envisaged by the declaration of trust the appellant would require access to the accounts and inventory of the temple to ensure that the temple's fund is utilised properly for the benefit of the temple and its devotees. The appellant sought for an order that an annual meeting of the trustees be held to discuss matters relating to the affairs of the temple and to make any joint decision for the interest of the temple. The disposal of the trust properties must be with the joint consent of the co-trustees. The orders sought by the appellant are in tandem with the powers and obligations of the trustees under the declaration of trust.

[20] Learned counsel further argued that the uncooperative conduct of the respondents is in clear disregard of the 2006 court order as well as the declaration of trust. The reliefs sought by the appellant as per the OS are for the benefit of the temple. It is impossible for the appellant to manage the temple effectively without having access to the accounts and inventory of the temple. In order for the appellant to raise queries there must be an annual trustees' meeting. The learned High Judge erred when she held that the appellant is a mere visitor and therefore there is no necessity for him to have any knowledge of the assets of the temple.

[21] The 2006 order confirmed that the appellant is the co-trustee of the temple. Thus, it is submitted that the issue regarding the position of the appellant as a co-trustee is *res judicata* as it was raised and decided by the 2006 court order.

The Respondents' Submission

[22] Learned counsel for the respondents argued that the words "the temple" referred to in the declaration of trust and in the appellant's OS and affidavits in support is different. Under the declaration of trust, the words "the temple" refers to the physical building erected on the trust lands. The words "the temple" in the OS refers to the religious institution called Beow Hiang Lim Temple which carries out its activities in the buildings erected on the trust lands. The declarations of trust confined the trust to trust properties identified and the building erected thereon.

[23] After Master Kong Euee's demise, the administration, supervision and management of the affairs of the temple was assumed by a "Tang Jia" (supervisor). It is argued by learned counsel for the respondents that the appellant and the respondents were not appointed as trustees of the temple and therefore the appellant has no right to attend the trustee meetings, to have access to the accounts and to take part in the administration of the temple.

[24] The appellant is just a volunteer under the said declarations of trust. It is the submission of the respondent counsel that a volunteer is a beneficiary who possess no valuable consideration for the creation of a trust. Thus, it is submitted the general principle of equity will not apply to this appeal where the appellant seeks to enforce the declaration of trust.

Our Decision

[25] Although the appellant had raised several grounds in the memorandum of appeal during the course of arguments before us, learned counsel for the appellant focused his submissions on the following grounds:

(a) that the appellant is not a mere visitor to the temple but is an appointed co-trustee of the temple together with the respondents under the declaration of trust; and

(b) as a co-trustee of the temple he is entitled to the information to carry out his duty and obligations under the declaration of trust.

[26] The entire basis of the appellant's case is premised on the two declarations of trust. Under the first declaration of trust dated 10 September 2002, the trust properties as described were transferred to the co-trustees in trust. It is expressly provided that the aforesaid properties are held in trust for the temple. All the buildings situated on or to be built on the trust properties are to be used for the purpose of the temple.

[27] The trust properties were purchased utilising the funds donated by the devotees of the temple and were registered under the name of Master Kong Euee as the sole trustee. The respondents are resident monks at the temple whilst the appellant is a Chinese national residing in Singapore. On 10 September 2002, five of the trust properties were transferred to Master Kong Euee, the appellant and the respondents as the trustees. At the same

time a declaration of trust was executed by Kong, the appellant and the respondents declaring that the five trust properties are held in trust for the temple. The balance of the six trust properties was transferred to Kong, the appellant and the respondents as the trustees on 24 August 2004. A declaration of trust was executed dated 24 August 2004 declaring that seven of the trust properties are held in trust for the temple.

[28] Clause 4 of the declaration of trust dated 10 September 2009 clearly stipulates that:

> the Temple shall be under the sole management and control of the Trustees and shall be used and maintained as directed.

[29] The declaration of trust dated 24 August 2004 contained similar terms reiterating that the "temple shall be under the sole management and control of the trustees and shall be used and maintained as they shall direct ..."

[30] The Learned High Court Judge in OS 1957 found no proper grounds for the removal of the appellant as trustee and confirmed that the appellant remain as the co-trustee of the temple. The High Court ordered the parties to regularise the position of the appellant as co-trustee and to be properly named in the title deeds after obtaining the necessary approvals from the State Authority. In the instant appeal before us, the learned High Court Judge agreed with the High Court Judge in OS 1957 that the appellant is a co-trustee of the temple,

> Saya bersetuju dengan hujahan plaintif bahawa plaintif kekal sebagai pemegang amanah Rumah Berhala berasaskan bukti berikut:
>
> (a) Pengisytiharan Amanah (Declarations of Trust, eksibit "ZHD-1" jelas menyatakan bahawa plaintif adalah pemegang amanah Rumah Berhala; dan
>
> (b) Pesuruhjaya Kehakiman, S. Nantha Balan, dalam penghakiman beliau telah memutuskan bahawa plaintif kekal sebagai pemegang amanah Rumah Berhala.

[31] However, in her grounds of judgment she said:

> 3. Masalahnya dengan permohonan plaintif ini ialah relif-relif yang dipohonnya adalah terlalu banyak. Seolah-olah beliau adalah orang yang berkuasa bagi Rumah Berhala tersebut.Contohnya, plaintif mengatakan defenden-defenden tidak boleh menjual hartanah-hartanah Rumah Berhala tanpa mendapatkan persetujuan bertulis daripada beliau terlebih dahulu. Plaintif juga mengatakan transaksi penjualan hartanah yang tidak mempunyai persetujuan bertulis daripada beliau harus diisytiharkan tidak sah dan terbatal. Saya mendapati, kecuali bagi prayer (11) permohonan plaintif dalam prayer (1) hingga (13) di lampiran 1 adalah keterlaluan, melampau, tidak munasabah dan bersifat opresif. Plaintif bukan penyumbang dana bagi Rumah Berhala itu. Jika plaintif hanya lah pelawat

yang berhasrat untuk mengunjungi Rumah Berhala, apa keperluan beliau untuk mengetahui aset-aset Rumah berhala termasuk barang-barang antik dan lukisan-lukisan untuk beliau periksa.

[32] The learned High Court Judge was of the considered view that any powers that his written consent is required with regards to the management and affairs of the trust properties:

Perkataan ... "the Temple shall be under the sole management and control of the trustees and shall be used and maintained as they shall direct" bukanlah lesen yang memberi kuasa kepada plaintif bahawa semua urusan berkaitan hartanah Rumah Berhala dan pengurusan Rumah Berhala itu sendiri harus mendapatkan persetujuan bertulis daripada plaintif terlebih dahulu. Sebaliknya, klausa 4 Pengisytiharan Amanah itu mengkehendaki Rumah Berhala itu diuruskan oleh kesemua pemegang amanah bagi faedah penganut Rumah Berhala itu.

[33] With respect to the learned judge, she appears to have misinterpreted the terms and purposes of the declarations of trust. We agree with the appellant's learned counsel when he submitted that the reliefs/orders sought by the appellant are in fact in tandem with the powers and obligations conferred upon the trustees of the temple as dictated by the terms of the declarations of trust. We would adopt the approach of Chang Ming Tat J (as he then was) in *Re Chin Sem Lin's Settlement; Yong Tet Fong & Anor v. Chin Thin Lee & Ors* [1971] 1 LNS 120; [1971] 2 MLJ 152 in the construction and the declarations of trust at p. 154 para E and we quote:

On the whole, I rather prefer the construction that puts a meaning to the word "said" in clause 13 to one that would treat it as surplus age. It is more in accord with the ordinary principles of construction and with the following *dicta* in the speech of Lord Selborne L.C. in *Pearks v. Moseley* (1879-1880) 5 App Cas 714 at p 719:

> The rule which has always been applied to cases of remoteness into the construction of the instrument, by which you investigate the expressed intention of the testator. You take his words and endeavour to arrive at their meaning, exactly in the same manner as if there had been no such law, and as if the whole intention expressed by the words could lawfully take effect. I do not mean, that, in dealing with words which are obscure and ambiguous, weight, even in a question of remoteness, may not sometimes be given to the consideration that it is better to effectuate than to destroy the intention: but I do say, that, if the construction of the words is one about which a court would have no doubt, though there was not law of remoteness, that construction cannot be altered or wrested to something different, for the purpose of escaping from the consequences of the law.

and at p. 722:

> That question has always been investigated by looking into the state of things as it was at the testator's death.

[34] Hashim Yeop Sani FJ (delivering the, judgment of the court) in the case of *Yong Nyee Fan & Sons Sdn Bhd v. Kim Guan & Co Sdn Bhd* [1978] 1 LNS 244 said:

> It has been found difficult to give a satisfactory definition of a trust but it has been accepted that the most satisfactory definition is by Professor Keeton which definition is that a trust is the relationship which arises wherever a person called the trustee is compelled in Equity to hold property, real or personal, and whether by legal or equitable title, for the benefit of some persons (of whom he may be one) or for some object permitted by law, in such a way that the real benefit of the property accrues, not to the trustee, but to the beneficiaries or other objects of the trust.

[35] The words used in the declarations of trust are clear, certain and unequivocal. The terms of the trust are not limited to the trust properties but also the management of the temple:

(a) The trust properties as identified and described are transferred to the trustees named;

(b) The trustees are empowered to deal and manage the trust properties according to the terms of the declarations of trust;

(c) The trustees shall permit the temple to use for the purposes as described under the said trust and for any other purposes in the opinion of the trustees improve or benefit the moral, social or intellectual condition of the temple; and

(d) Subject to the provisions of the trust the temple shall be under the sole management and control of the trustees and shall be used and maintained as the trustees shall direct.

[36] We are of the considered view that the reliefs sought by the appellant in the OS are not unreasonable. The learned High Court Judge had misdirected herself in finding that the appellant is a foreigner and have not visited the temple since January 2006. He, therefore, does not have the right to dictate how the temple should be managed:

> 5. Adalah tidak munasabah sama sekali bagi seorang warganegara asing yang tidak berada di negara ini, yang bukannya pelawat Rumah Berhala itu sejak Januari 2006, untuk "dictate" kepada warganegara ini terma-terma bagaimana sebuah Rumah Berhala patut diuruskan.

[37] By the declarations of trust, the appellant is the co-trustee and must be allowed access to information pertaining to the affairs of the temple in order for him to exercise his duties effectively as a co-trustee according to the terms of the trust.

Conclusion

[38] Having considered the submissions by both learned counsel as well as the materials before us and for the reasons as stated above, we unanimously allowed the appeal with no order as to costs. We ordered that the deposit be refunded. We also ordered the High Court orders to be set aside and granted the following orders:

(a) the appellant and respondents as joint trustee for the temple will hold a trustees' meeting once a year and that the first trustees meeting will be held within one from the date of the order hereof;

(b) the annual audited accounts the temple will be shown to the appellant for inspection one month before the annual trustees' meeting;

(c) the temple's annual audited accounts will be discussed at all the annual trustees' meeting;

(d) the annual audited accounts of the temple for the years after the demise of Master Kong Euee on 23 January 2006, that is from 2006 till 2014, will be shown to the appellant for inspection within two weeks from the date of this order;

(e) that the inventory of temple's assets, including antiques and paintings, will be produced by the respondents for the appellant's inspection within two weeks from the date of the order; and

(f) the respondents shall obtain the written consent of the appellant to sell and/or dispose of the trust properties and that all transactions without the prior written consent of the appellant shall be declared null and void. The appellant to take all the necessary steps to file all the relevant applications from the relevant authorities within one month from the date of this order.